

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOHN WALTER WILLIAMS,	)	
	)	
Petitioner,	)	
	)	
v.	)	1:07CV938
	)	
STATE OF NORTH CAROLINA,	)	
	)	
Respondent.	)	

**ORDER AND RECOMMENDATION**  
**OF UNITED STATES MAGISTRATE JUDGE**

Petitioner, a prisoner of the State of North Carolina, has submitted a document titled as a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. The Clerk of Court received the submission on December 10, 2007, which Petitioner had dated as of December 6, 2007. Although the document references the case numbers of two prior cases brought by Petitioner in this Court under 42 U.S.C. § 1983, the document overall does attack Petitioner's criminal convictions. Therefore, the Court will treat it as it is labeled. For the following reasons, however, the petition cannot be further processed.

1. Petitioner has not used the required § 2254 Forms. Rule 2, R. Gov. § 2254 Cases. The Clerk will forward to Petitioner the proper forms.
2. Petition was not signed by Petitioner (at least one copy must bear an original signature). [Attached instructions and Rule 2(c), Rules Governing § 2254 Cases.]
3. An insufficient number of copies was furnished. Petitioner must submit the original and two copies. [Attached instructions and Rule 3(a), Rules Governing § 2254 Cases.]

4. Filing fee was not received, nor was an affidavit to proceed in forma pauperis submitted and signed by Petitioner. [Attached instructions and Rule 3(a), Rules Governing § 2254 Cases.]
5. Petitioner has included certain claims, such as allegations that he needs surgery and that he was discriminated against based on his race, that are not properly part of a petition under § 2254. These would need to be brought as separate suits under 42 U.S.C. § 1983.

Because of these pleading failures, this particular petition should be filed and then dismissed without prejudice to Petitioner filing a new petition on the proper habeas corpus forms with the \$5.00 filing fee, or a completed application to proceed in forma pauperis, and otherwise correcting the defects noted. The Court has no authority to toll the statute of limitation, therefore it continues to run, and Petitioner must act quickly if he wishes to pursue this petition. See Spencer v. Sutton, 239 F.3d 626 (4th Cir. 2001). To further aid Petitioner, the Clerk is instructed to send Petitioner a new application to proceed in forma pauperis, and new § 2254 forms.

In forma pauperis status will be granted for the sole purpose of entering this Order and Recommendation.

**IT IS THEREFORE ORDERED** that in forma pauperis status is granted for the sole purpose of entering this Order. The Clerk is instructed to send Petitioner § 2254 forms, instructions, and a current application to proceed in forma pauperis.

**IT IS RECOMMENDED** that this action be filed, but then dismissed sua sponte without prejudice to Petitioner filing a new petition which corrects the defects of the current petition.

  
United States Magistrate Judge

December 12, 2007